IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

WP(C).No. 15773 of 2007(C)

PETITIONERS:

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1. V.MOHAN DAS MENON, C.M.C-4,
   KANAKALAYAM, CHERTHALA.

2. M.JAYSANKAR, JAYAKEERTHI,
   CMC 4, PULIYANNOOR MADOM, CHERTHALA.

BY ADV. SRI.G.SUKUMARA MENON

RESPONDENTS:

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1. THE CHERTHALA MUNICIPAL COUNCIL,
   REPRESENTED BY ITS CHAIRMAN.

2. CHERTHALA MUNICIPALITY, REPRESENTED
   BY THE MUNICIPAL SECRETARY, CHERTHALA.

BY ADV. SRI.J.OMPRAKASH
SRI.J.OMPRAKASH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A.K.BASHEER, J.

W.P.(C)No.15773 OF 2007

Dated this the 10th day of July, 2007

JUDGMENT

Petitioners have impugned Ext.P7 order passed by Cherthala Municipality on July 4, 2005 by which petitioner no.2 had been informed to await the decision of the Government on the question referred to it as directed by the Tribunal for Local self Government Institutions at Thiruvananthapuram.

2. In Ext.P6 order, the Tribunal noticed that the Municipality had approved the building plan submitted by the petitioner no.1 showing the land of the Municipality as access to the proposed building. Admittedly, petitioners did not have any property of their own through which they could gain access to the building which they proposed to construct.

3. It is the admitted position that petitioner No.1 had applied for building permit and licence to construct a single storeyed building with 3 shop rooms having a plinth area of 67.47 square meters. Exts.P1 and P2 are true photocopies of the building permit and site plan approved by the Municipality on

February 16, 2004. It is also on record that petitioner No.1 submitted a revised building plan with certain modifications including addition of another floor.

4. It is the case of the petitioners that the Municipality had approved the revised building plan in May 2004, as could be seen from Ext.P4. Copy of the building permit is on record as Ext.P3. It was at that stage that petitioner No.2 had purchased the property from petitioner No.1 by virtue of a registered sale deed. He had submitted an application before the Municipality to make necessary entries with regard to transfer of the property, building permit, licence etc. in his name. It is further contended by the petitioners that the Municipality was again approached by petitioner No.1 for permission to construct a stair case room in the building. But no action was taken by the Municipality on that request.

5. It is admitted by the petitioners that the staircase room was nevertheless constructed even though the Municipality had not granted permission. At that stage petitioner No.1 was

served with Ext.P5 order dated April 10, 2005 informing him that permission for any construction in excess of the order of sanction cannot be granted. The said order was challenged by the petitioners before the Tribunal. It was while disposing of the above appeal that the Tribunal had directed the Government to look into the propriety of the action of the Municipality in granting permission to the petitioners to construct the building in a land, access to which was claimed through the land belonging to the Municipality. Thereafter the Municipality had issued Ext.P7 order to petitioner No.1 informing him that his request for granting approval for the revised plan cannot be allowed. The said order has been challenged by the petitioner in this writ petition.

6. I do not propose to deal with the various contentions raised by the petitioners at this stage, since admittedly the Government is in seisin of the issue pursuant to the direction issued by the Tribunal in Ext.P6 order. But it is pertinent to note that in Ext.P7 order the Municipality had noticed that

petitioners had effected certain constructions without obtaining requisite permit or licence and also in violation of the plan and licence approved by it. Yet again, I refrain from making any further observation on that aspect at present.

7. But the short question that arises for consideration is whether Ext.P7 order issued by the Municipality is liable to be quashed. I am afraid, the petitioner is not entitled to succeed for reasons more than one. As noticed already, the Government is in seisin of the question as to whether the Municipality had authority or power to acquiesce to the user of its own land as access to the building belonging to the petitioners. Admittedly the adjoining land was acquired by the Municipality for the purpose of construction of Town Hall. Petitioners had not shown any other access to their building site as is evident from Ext.P6. The Government is yet to take a decision in the matter. Therefore petitioners have to necessarily wait till the Government takes a decision and in the meanwhile they cannot be allowed to continue with the construction as rightly ordered

by the Municipality in Ext.P7 order.

8. There is yet another aspect of the matter. Ext.P7 order was issued by the municipality in July 2005. Petitioners have preferred this writ petition after a lapse of two years challenging the above order/communication. This is yet another circumstance which persuades me not to grant any relief to the petitioners at this stage. However, I make it clear that I have not considered the merit of any of the contentions raised by the petitioners. It will be open to the petitioners to pursue the remedies available to them under law, if so advised, after the Government takes a decision on the question referred to it, as directed by the Tribunal in Ext.P6. If the Government is of the view that petitioners are to be afforded an opportunity of hearing, necessarily petitioners shall also be heard before a decision is taken.

Writ petition is dismissed.

A.K.BASHEER, JUDGE

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